

STATE ROAD FUND; -- Money paid to the State by the Federal Government for highway purposes must go into the State Treasury, and can be expended only upon warrants issued pursuant to appropriations.

July 1, 1938

Honorable Louis V. Stigall
Chief Counsel
Mo. State Highway Department
Jefferson City, Missouri



Dear Mr. Stigall:

We are in receipt of yours of the 17th, which reads as follows:

"In compliance with the request of the State Auditor and the State Treasurer, and in accordance with your suggestion, we are writing to request your opinion concerning the powers of the State Highway Commission, the State Auditor and the State Treasurer under the circumstances hereinafter outlined.

"The appropriation for the 1937-38 biennial period for the construction and maintenance of state highways was \$30,000,000. Section 2 of the act approved April 16, 1937, pages 12, 13, 14 and 15, Session Laws of 1937. On June 1, 1938, there remained an unexpended balance of said \$30,000,000 of \$9,527,732.

"The amount which we estimate must be paid out of this appropriation between now and December 31, 1938, is \$8,909,000. This latter sum includes the cost of maintaining the state highways and the amounts which must be paid on fixed obligations already finally incurred. This would leave available only the sum of \$618,000, which could be charged against said \$30,000,000 appropriation.

"For the federal fiscal year beginning July, 1937, certain grants were made by the Govern-

ment to the State for grade separation and forest highway purposes. All of these grants represent one hundred per cent payments by the Government and do not have to be matched with state funds. Under the rules and regulations of the Bureau of Public Roads, full payment for all such work must be made by the Commission, the State thereafter being reimbursed in full for all such payments, but only after the final completion of the particular projects. The balance of these funds available to the State is approximately \$1,400,000. The Bureau of Public Roads has ruled and is now insisting and demanding that approximately all of said \$1,400,000 be placed under contract this summer, and that as much of such work as is possible be completed before January 1, 1939.

"The Commission now finds itself in the position of being required to place under contract and pay for perhaps the full \$1,400,000 worth of such work before January 1, 1939, or lose a considerable portion of these grants. Obviously, with only \$618,000 remaining in the \$30,000,000 appropriation, such work cannot be paid for in full out of such appropriation. However, the Government owes the Commission \$652,000 reimbursement for state funds advanced in payment of the Government's share of federal aid projects. If some legal method could be devised whereby such \$652,000 and other funds hereafter paid by the Government up to January 1, 1939, would not have to be placed in the State Road Fund but could be placed in a special fund and paid out during the next five months on state highway projects, or used as a revolving fund, our present difficulty would be solved, and the State would be in no danger of losing any of these federal grants. If even amount as small as \$250,000 could be placed in such special fund and used as a revolving fund, this danger would be averted.

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"We believe that it would be legal and proper under the circumstances for the Commission to request the State Auditor and the State Treasurer to receive this \$652,000, and other federal funds, place them in a special trust fund, and pay them out upon requisition by the Commission for state highway work. We are enclosing herewith a short brief outlining our position as to the law in this matter.

"The Highway Commission desires, of course, to proceed according to law, and to make no request of the State Auditor and the State Treasurer which would not have the approval of your office. Therefore, prior to taking any action whatever, we are requesting that you advise us if under the circumstances it would be proper for the Commission to request these other officers to receive these funds, place them in a special trust fund, and pay them out upon the Commission's requisition, and at the end of the biennial period, transfer the unexpended balance of the fund to the State Road Fund.

The question presented by your letter narrows down to this: Can the money which the Federal government will pay back to the State of Missouri by way of reimbursement for similar amounts paid out by the State in road construction, be placed in a separate fund from the State Road Fund and be expended upon requisitions of the Highway Commission?

Article IV, Section 43 of the Constitution of Missouri provides as follows:

"All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law. ** "

Section 11425, R. S. Mo. 1929 reads in part as follows:

"The state treasurer shall receive and keep, as provided by law, all the moneys of the state not expressly required by law to be received and kept by some other person; disburse the public moneys upon warrants drawn on the treasury according to law, and within the time limited in the Constitution, and not otherwise; *** "

It is clear from the foregoing constitutional provision that the money under discussion is money derived by the State from a certain source, and therefore such money must go into the State Treasury. The said constitutional provision and also the statute above quoted forbids the disbursement of such money, except in pursuance of regular appropriations and upon warrants issued in accordance with such appropriations.

Furthermore, Article X, Section 19, Constitution of Missouri, reads in part as follows:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; *** "

It is true that Section 8106, R. S. Mo. 1929 provides that the monies due to the State of Missouri from the United States by reason of highway construction shall be received by the State Treasurer and deposited in a separate fund and paid out by the State Treasurer on requisitions drawn by an officer of the State Highway Commission on a warrant of the State Auditor. Said latter section further provides that no appropriation shall be necessary for the expenditure of such funds. Said Section 8106 was passed at the First Extra Session of 1921 (see Section 16, page 131, Laws Mo. 1921, First Extra Session)

However, in 1931 the Legislature, by an act which appears at pages 319-320, Laws Mo. 1931, made different provisions for the handling of these particular funds coming to the State from the Federal government. Section 8147 reads as follows:

"There is hereby created a state road fund which shall receive all moneys from sale of bonds and all moneys given the state by the United States government for road purposes and the balance from the state highway maintenance-construction fund as provided in section 8146 of this article. Appropriations from this fund shall be made only for the purpose of constructing state highways and for carrying into effect the provisions of section 44a, Article 4, of the Constitution of Missouri. (Laws 1929, p. 87, Sec. 4.) "

This later expression of the Legislature definitely requires the funds received from the United States government to go into the State Road Fund. Said later arrangement also provides for appropriations from this fund, which is made up in part of funds received from the Federal government. This later arrangement definitely marks these funds coming from the Federal government as State money.

In the case of State ex rel. vs. Board of Regents, 264 S. W. 1.c. 701, the Supreme Court said:

"In the foregoing discussion of the constitutional provision invoked by relator, we have stated generally that no statute required the payment into the state treasury of the money here in controversy, and that a statutory enactment was a prerequisite to such payment and its receipt and deposit by the treasurer to entitle it, under the Constitution, to be classified as State money."

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Even absent the constitutional provision above referred to (Article IV, Section 43), the foregoing statute (Sec. 8147) definitely requires the particular funds in question to be paid into the State treasury. This latter section therefore definitely marks the funds as State money. Being State money, the treasurer can only pay it out in accordance with regular appropriations by the Legislature.

The State has spent its own money to construct certain roads upon a promise from the Federal government that it will be reimbursed to a certain extent for such expenditures. The money of the State of Missouri has therefore been expended by way of an advancement to the Federal government. The money which the Federal government pays back to the State really represents a replacement of the State's money, and for this reason also, the funds which are paid to the State under such an arrangement really become the State's money, since it replaces the State's money which has been expended.

We cannot escape the conclusion, therefore, that both by the provisions of the Constitution and applicable statutes, the funds coming from the Federal government to the State for highway purposes can be received only by the State Treasurer, and that after received by him, they can be paid out only upon appropriations by the Legislature.

CONCLUSION.

It is, therefore, the opinion of this office that money due and to be paid to the State of Missouri by the Federal government for highway purposes or by way of reimbursement of the State for similar sums expended by it for highway purposes, must be paid into the State treasury and be withdrawn from the State treasury only upon warrants issued pursuant to regular appropriations by the Legislature.

Respectfully submitted

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APPROVED:

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